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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

INTERNATIONAL CHURCH OF THE FOURSQUARE GOSPEL

Case No. C 07-03605 PJH

Plaintiff,

V.

CITY OF SAN LEANDRO, TONY SANTOS
(in his official capacity), SURLENE G.
GRANT (in her official capacity), DIANA M.
SOUZA (in her official capacity), JOYCE R.
STAROSCIAK (in her official capacity), BILL
STEPHENS (in his official capacity), JIM
PROLA (in his official capacity), JOHN
JERMANIS (in his official and individual
capacities), DEBBIE POLLART (in her official
and individual capacities), DOES 1-50.

Defendants.

DEFENDANTS' OBJECTIONS TO DECLARATIONS IN SUPPORT OF PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION; OBJECTIONS TO REQUEST FOR JUDICIAL NOTICE; OBJECTIONS TO PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW, AND OTHER EVIDENTIARY OBJECTIONS

Date: September 5, 2007

Time: 9:00 a.m.

Crtrm: 3

Complaint Filed: 7/12/07

Hon. Phyllis J. Hamilton

Complaint Filed: 7/12/07

1 Defendants CITY OF SAN LEANDRO, TONY SANTOS, SURLENE G. GRANT, DIANA
 2 M. SOUZA, JOYCE R. STAROSCIAK, BILL STEPHENS, JIM PROLA, JOHN JERMANIS, and
 3 DEBBIE POLLART (hereinafter "the Defendants") offer the following objections to the declarations,
 4 Request for Judicial Notice, Proposed Findings of Fact and Conclusions of Law, and other supporting
 5 documents or evidence offered in support of Plaintiffs' Application for Preliminary Injunction.

6 **I. DECLARATIONS AND EXHIBITS IN SUPPORT OF MOTION FOR
 7 PRELIMINARY INJUNCTION**

8 The Defendants generally object to all of the declarations offered in support of Plaintiffs'
 9 application because they lack foundation and are incompetent evidence as a matter of law. Fed. R.
 10 Evid. 401, 402, 602. None of the declarations, except for that of Senior Pastor Gary Mortara, sets
 11 forth the length of time the declarant has held his or her position at Faith Fellowship Worship Center,
 12 what their duties are or have been in their various capacities, or other facts establishing their personal
 13 knowledge. Fed. R. Evid. 602.

14 Specifically, the Defendants object to each and every declaration, and exhibits thereto, as
 15 follows:

16 **A. Declaration of Barbara Cabrera**

17 1. *Paragraph 3, Line 21-page 3, lines 2-13.* This declarant fails to establish any
 18 foundation to offer any particulars on the number of women who participate in Women's Ministry
 19 activities today, the number of women who would like to participate but cannot do so because of
 20 space concerns, actual classrooms sizes, or actual growth figures. Declarant Cabrera simply offers
 21 her best guess and such speculation is irrelevant and improper. The declarant also fails to establish
 22 that she is familiar with the "new facility," or its ability to accommodate Women's Ministry
 23 activities. Fed. R. Evid. 602.

24 2. *Paragraph 4, Line 14-20.* Lacks foundation that Ms. Cabrera is familiar with the new
 25 facility. Fed. R. Evid. 602.

26 3. *Paragraph 5.* Irrelevant. Fed. R. Evid. 402.

27 4. *Paragraph 5, Line 25-page 4, lines 1-2.* Lacks foundation and improper lay witness
 28 opinion that "Faith Fellowship's growth, relative to additional classes and adequate services, is being
 'substantially burdened' by the City's decision to deny the use of the Catalina Property." Fed. R.

1 Evid. 602, 701. Substantial burden is a legal term of art under case law and not a determination that
2 the declarant is qualified to make.

3 **B. Declaration of FaithKidz Ministry Director Casey Lee**

4 1. *Paragraph 3, Lines 18-25.* This declarant fails to establish any foundation to offer
5 conclusions as to the “adverse impact” on FaithKidz Ministry, lost opportunities, or the “substantial
6 burden on …religious exercise” caused by the denial of the use of the Catalina Property by the City
7 of San Leandro. Fed. R. Evid. 402, 602. Substantial burden is a legal term of art under case law and
8 not a determination that the declarant is qualified to make.

9 2. *Paragraph 4, Lines 1-3.* Lacks foundation for conclusion that parents and children
10 have also been “substantially burdened.” Fed. R. Evid. 602. Substantial burden is a legal term of art
11 under case law and not a determination that the declarant is qualified to make.

12 3. *Paragraph 4, Lines 18-21.* Lacks foundation and speculative that “the free religious
13 exercise of *all* parents and children at Faith Fellowship are being ‘substantially burdened’ based upon
14 the one example provided. Fed. R. Evid. 602. Substantial burden is a legal term of art under case
15 law and not a determination that the declarant is qualified to make.

16 4. *Paragraph 4, Lines 3-21.* Hearsay to the extent declarant is relaying a mother’s
17 experience or how this unnamed mother was “exacerbated,” “frustrated,” and “ready to leave the
18 Church.” Fed. R. Evid. 802.

19 5. *Paragraph 6, Lines 22-23.* Lacks foundation for conclusion that classroom closure
20 has occurred many times or “almost every Sunday.” Fed. R. Evid. 602. There are no facts
21 establishing actual classroom size, number of children, counts by grades, or the amount of time that
22 Sunday closure has been in existence.

23 6. *Paragraph 6, page 4, Lines 2-3.* Lacks foundation, speculative and improper lay
24 witness opinion that the size of the existing building “has prohibited the ministry from reaching all
25 [children],” and placed “a substantial burden on … the free practice of religion.” Fed. R. Evid. 402,
26 602. Substantial burden is a legal term of art under case law and not a determination that the
27 declarant is qualified to make.

1 C. Declaration of Faith Fellowship Food Ministry Director Catalina Vaughn2 1. *Paragraph 4.* Lacks foundation that the declarant is familiar with industrial kitchens.

3 Fed. R. Evid. 602.

4 2. *Paragraph 5, Lines 8-10.* Lacks foundation that the declarant is familiar with the new
5 building, the existence of a kitchen or food preparation area, the size and/or capacity of the existing
6 or proposed kitchen and food preparation area, or the ability of the new building to accommodate
7 professional restaurant style equipment. Fed. R. Evid. 602.8 3. *Paragraph 5, Lines 10-14.* Lacks foundation, speculative and improper lay witness
9 opinion that new facility will enable Plaintiffs to fulfill its duty to help the poor. Fed. R. Evid. 402,
10 602.11 4. *Paragraph 6.* Lacks foundation for conclusion that denial of the use of the Catalina
12 property is a “substantial burden.” Fed. R. Evid. 602. Substantial burden is a legal term of art under
13 case law and not a determination that the declarant is qualified to make.14 D. Declaration of Parking Director Dave Mortara15 1. *Paragraph 3, Lines 17-19.* The declarant fails to establish any foundation to conclude
16 that the City’s decision “to not allow a use permit for the new facility has severely restricted the free
17 practice of religion at the Church.” Fed. R. Evid. 602.18 2. *Paragraph 3, Lines 19-23.* Lacks foundation to opine as to causation between denial
19 of assembly use permit and inadequate parking at current location. The declarant fails to establish
20 any foundation to offer any particulars regarding how many persons wish to attend services and
21 cannot do so because of allegedly inadequate parking, the reasons for three separate Sunday services,
22 or any alternative parking scenarios.23 3. *Paragraph 4, Lines 26-page 3, Lines 1-6.* Lacks foundation, speculative, and hearsay
24 to the extent the declarant is relaying how far people have to walk to attend church, what they do
25 when they see the lot is full, and guessing as to the reasons why people may or may not attend
26 church.27 4. *Paragraph 5, Lines 8-10.* Lacks foundation, improper lay witness opinion that
28 parking problems are stifling fellowship.

1 5. *Paragraph 5, Lines 16-17.* Lacks foundation for conclusion that the City's decision to
2 not allow use of the new facility is a "substantial burden" on the free practice of religion. Fed. R.
3 Evid. 602. Substantial burden is a legal term of art under case law and not a determination that the
4 declarant is qualified to make.

5 6. *Paragraph 6, Lines 18-25.* Irrelevant that visitors do not obey parking rules. Fed. R.
6 Evid. 402.

7 7. *Paragraph 6, Lines 24-25.* The statement "[w]e get complaints almost every week
8 due to members parking near residential homes" lacks foundation. Fed. R. Evid. 402.

9 8. *Paragraphs 7-8.* Lacks foundation and hearsay. The declarant fails to establish any
10 foundation to offer any particulars as to what happens on the freeway off-ramps as people drive to
11 church or what happens to church members while crossing the street.

12 9. *Paragraph 8, Lines 13-17.* Lacks foundation that there are 400 parking spaces
13 available at the Catalina property or "sparse traffic on Sundays in the light industrial area." The
14 declarant has failed to establish his personal knowledge of the Catalina property. Lacks foundation,
15 speculative and improper lay witness opinion to the extent the declarant concludes that safety
16 problems will be eliminated at the Catalina property.

17 10. *Paragraph 9, 24-26.* Lacks foundation that the declarant is familiar with the reasons
18 for having three services.

19 11. *Paragraph 10.* Lacks foundation that the declarant is familiar with any of the various
20 costs associated with inadequate parking.

21 12. *Paragraph 11, Lines 18-page 6, Line 9.* The declarant fails to establish any
22 foundation to offer any particulars on the number of parking spaces at the new property, or the
23 additional parking available on the weekends resulting from negotiations with neighboring
24 businesses. The declarant's conclusions that use of the new property will solve all of the Church's
25 problems, including but not limited to reducing the number of religious services, redirecting traffic to
26 an empty commercial area, encouraging more members to be at the church at one time, or preventing
27 members from having to "sit[] in stopped traffic on a fast moving freeway" lacks foundation and is
28 speculative.

1 13. *Paragraph 12.* Objection to the extent this paragraph is based on information and
2 belief rather than on personal knowledge or observation. Fed. R. Evid. 602. Irrelevant. Fed. R.
3 Evid. 402.

4 **E. Declaration of Senior Pastor Gary Mortara**

5 1. *Paragraph 5, Lines 9-12.* Lacks foundation, speculative as to reasons why people
6 turned away from Faith Fellowship. Fed. R. Evid. 602.

7 2. *Paragraph 5, Line 12-16.* Lacks foundation and speculative as to why the church
8 which was founded in 1947, and which the declarant did not take over until September 1993, located
9 where it did or what City zoning allowed at the time.

10 3. *Paragraph 6.* Lacks foundation as to acreage, parking spaces and accessibility of
11 property at 14600 and 14850 Catalina Street.

12 4. *Paragraph 7.* Lacks foundation and hearsay to the extent the declarant is relaying
13 what unidentified Church representatives discussed with City officials. Irrelevant insofar as zoning
14 decisions can only be made by the legislative body, not staff or individual Council members. Fed. R.
15 Evid. 401, 402.

16 5. *Paragraph 7, Lines 6-14.* Lacks foundation that declarant knows what City officials
17 advised, if anything, and why they did so. Lacks foundation and improper lay witness opinion that
18 the advice given was "irrelevant." Fed. R. Evid. 402, 602.

19 6. *Paragraph 9.* The declarant fails to establish that he is a member of the Church's
20 Council or the denomination International Church of the Foursquare Gospel that approved the
21 purchase of, or assented to, the purchase of the Catalina property. Fed. R. Evid. 602.

22 7. *Paragraph 11, Lines 13-16.* Lacks foundation, hearsay. Fed. R. Evid. 602, 802.

23 8. *Paragraph 12.* The declarant fails to establish any foundation to offer any particulars
24 of the City Council Business Development Committee meeting on June 8, 2006, or what the
25 municipal code allows in industrial districts. The declarant's offered description of the meeting is
26 improper. The Minutes speak for themselves.

1 9. *Paragraph 15.* Lacks foundation, speculative and argumentative that the Planning
2 Commission delayed taking action or postponed discussion regarding the Catalina property. Fed. R.
3 Evid. 402, 602, 611(a).

4 10. *Paragraph 17.* The declarant fails to establish any foundation to offer any particulars
5 of the October 12, 2006 meeting of the City Council's Business Development Committee. The
6 declarant's offered description of the meeting is improper. The Minutes speak for themselves.

7 11. *Paragraph 18.* The declarant's offered description of the meeting is improper. The
8 Minutes speak for themselves.

9 12. *Paragraph 20.* Lacks foundation and hearsay to the extent the declarant is relaying
10 what one of the Church's attorneys did – sent a letter – and what that letter said. Fed. R. Evid. 602,
11 802.

12 13. *Paragraph 21.* The declarant fails to establish any foundation to offer any particulars
13 of the December 7, 2006 meeting of Board of Zoning Adjustment. Fed. R. Evid. 602. The Minutes
14 speak for themselves. Similarly, declarant fails to establish any foundation for his statement that “[a]t
15 all times, the Church staff, or through its agents, provided whatever materials and performed all acts
16 requested by the City in an expedited fashion.” Fed. R. Evid. 602. The declarant's offered opinion
17 that “[a]ll delays emanated from the City” lacks foundation and is irrelevant. Fed. R. Evid. 401, 402,
18 602.

19 14. *Paragraph 22, Lines 16-18.* Lacks foundation and speculative as to reasons why the
20 church closed escrow.

21 15. *Paragraph 22, Lines 19-24.* Declarant's offered description of the statements of City
22 officials lack foundation. Fed. R. Evid. 602. They also constitute inadmissible hearsay. Evid. Code
23 802.

24 16. *Paragraph 23.* Lacks foundation. Fed. R. Evid. 602. The recommendation of the
25 Redevelopment Advisory Committee speaks for itself.

26 17. *Paragraph 24.* Lacks foundation. Fed. R. Evid. 602. The recommendation of the
27 Planning Commission speaks for itself.

1 18. *Paragraph 25.* Lacks foundation. Fed. R. Evid. 602. The Minutes of the City
2 Council speak for themselves.

3 19. *Paragraph 27 & Exhibit A § n(2).* Lacks foundation. Fed. R. Evid. 602. The
4 Planning Staff Report speaks for itself. Exhibit A lacks foundation and is not properly authenticated.
5 (*See, infra.*)

6 20. *Paragraph 28 & Exhibit A § n(2).* Lacks foundation. Fed. R. Evid. 602. The
7 Planning Staff Report speaks for itself. Exhibit A lacks foundation and is not properly authenticated.

8 21. *Paragraph 29 & Exhibit A § n(2).* Lacks foundation. Fed. R. Evid. 602. The
9 Planning Staff Report speaks for itself. Exhibit A lacks foundation and is not properly authenticated.
10 (*See, infra.*)

11 22. *Paragraph 30 & Exhibit A § n(6).* Lacks foundation. Fed. R. Evid. 602. The Minutes
12 speak for themselves. Exhibit A lacks foundation and is not properly authenticated. (*See, infra.*)

13 23. *Paragraph 31 & Exhibit A § 0(5).* Lacks foundation. Fed. R. Evid. 602. The Minutes
14 speak for themselves. Exhibit A lacks foundation and is not properly authenticated. (*See, infra.*)

15 24. *Paragraph 31, Lines 10-14.* Hearsay to the extent the declarant attempts to relay what
16 Paul Gantt said.

17 25. *Paragraph 32.* The declaration fails to establish any foundation to offer any
18 particulars on the economic damages to the Church. Fed. R. Evid. 602.

19 26. *Paragraph 33.* Lacks foundation and speculative as to church's annual growth, and
20 reasons why growth stopped last year. Fed. R. Evid. 602.

21 27. *Paragraph 35.* Lacks foundation that the declarant is familiar with the reasons why
22 people are turned away from the church or what parents feel and irrelevant. Fed. R. Evid. 402, 602.

23 28. *Paragraphs 34-40.* Irrelevant. Fed. R. Evid. 402.

24 29. *Paragraph 41, Lines 14-16.* The declarant fails to establish any foundation to offer
25 any particulars on the numbers of cars turned away from the church.

26 30. *Paragraph 41, Lines 21-page 16, Lines 1-2.* Lacks foundation with respect to
27 numbers of people converted and lost opportunities.

1 31. *Paragraph 42, Lines 5-6.* The declarant fails to establish any foundation to offer any
 2 particulars on the numbers of cars turned away each Sunday.

3 32. *Paragraph 42, Lines 9-10.* Lacks foundation with respect to numbers of believers and
 4 lost opportunities.

5 33. *Paragraph 43, Lines 22-24.* The declarant fails to establish any foundation to offer
 6 any particulars on the nature of the Catalina property or its ability to enable the Church to fulfill all of
 7 its missions and goals. Fed. R. Evid. 602.

8 34. *Paragraph 44.* Lacks foundation as to what those who are allegedly turned away each
 9 Sunday feel as a result of the City's denial of the use of the Catalina property. Fed. R. Evid. 602.

10 35. *Paragraph 45, Lines 10-11.* Lacks foundation and improper lay witness opinion that
 11 "the exponential growth of the Church is hampered due to the denial of the use of the Catalina
 12 property." Fed. R. Evid. 602.

13 36. *Paragraph 45, Lines 11-16.* Lacks foundation as to what the new building can or will
 14 accommodate in terms of seating, parking or classrooms. Fed. R. Evid. 602.

15 37. *Paragraphs 45, Lines 16-17.* Lacks foundation and hearsay to the extent the declarant
 16 attempts to relay what immediate neighbors have expressed in letters that are not attached as exhibits.

17 38. *Paragraph 45, Lines 23-24.* Lacks foundation and hearsay to the extent the declarant
 18 attempts to relay what neighboring businesses think.

19 39. *Paragraph 46.* The declarant fails to establish any foundation to offer the opinion that
 20 moving to the new building will enable the Church to practice its religious beliefs and accomplish its
 21 mission. Fed. R. Evid. 602.

22 F. **Declaration of Youth Pastor Matt Lacey**

23 1. *Paragraph 3.* Lacks foundation, speculative that unspecified "conditions imposed by
 24 the City of San Leandro against [the declarant's] church have had an adverse impact on Faith
 25 Fellowship's Ministries and discipleship programs." Fed. R. Evid. 602.

26 2. *Paragraph 5.* Lacks foundation that the declarant is familiar with interpretation of
 27 building and fire codes. Fed. R. Evid. 602.
 28

1 3. *Paragraph 6, Lines 21-25.* Lacks foundation that the declarant knows the reasons why
 2 parents do not attend the youth activities. Fed. R. Evid. 602.

3 4. *Paragraph 7, Lines 3-5.* The declarant fails to establish any foundation to offer any
 4 particulars on the nature of the Catalina property. Fed. R. Evid. 602.

5 5. *Paragraph 8.* Lacks foundation and improperly lay witness opinion that denial by the
 6 City of the use of the Catalina property “has been a ‘substantial burden’ on [the church’s] ability to
 7 evangelize, disciple, and provide social services to students.” Fed. R. Evid. 402, 602. Substantial
 8 burden is a legal term of art under case law and not a determination that the declarant is qualified to
 9 make.

10 G. Declaration of Paul Gantt

11 1. *Qualifications.* Fed. R. Evid. 104(a). The declarant’s knowledge, skill, training and
 12 experience in fire services and environmental safety do not qualify him as an expert in the field of
 13 Planning Commission business or the creation of an Assembly Use (AU) Overlay District.

14 2. *Paragraph 5.* Lacks foundation as to who prepared statement that the declarant is
 15 referring to and purportedly read into the record at a Planning Commission meeting. Lacks
 16 foundation that Exhibit A § n(4) is part of an administrative record. The exhibit itself is
 17 unauthenticated. (*See, infra.*) Fed. R. Evid. 602.

18 3. *Paragraph 6.* The Planning Commission’s denial speaks for itself and the declarant’s
 19 attempt to paraphrase the denial, or to opine as to what was or was not emphasized by the Planning
 20 Commission, is improper. Fed. R. Evid. 402, 602.

21 4. *Paragraph 6.* The statement “I could find no rational reason to deny their application
 22 based on the perceived hazards” lacks foundation. The declarant does not state how or when he
 23 “evaluated the facilities” located near the Catalina property, or the facts or data he relied on for this
 24 opinion. Nor is there any discussion as to what the declarant found as a result of his research or
 25 review that lead to this conclusion. Fed. R. Evid. 602.

26 5. *Paragraph 7.* Irrelevant, lacks foundation. Fed. R. Evid. 402, 602. The declarant
 27 fails to establish how or when he “examined the 196 properties,” or what his staff member’s survey
 28

1 revealed for him to conclude that "there were few, if any, properties zone (sic) AU Overlay that are
 2 not within ¼ mile of (sic) business with a Hazardous Materials Business Plan...."

3 6. *Paragraph 9-11 & Exhibit B.* The underlying data for declarant's conclusion is a
 4 graphic (Exhibit B) prepared by Land Plan Associates of Pleasanton. The exhibit is unauthenticated,
 5 lacks foundation and is hearsay evidence. To the extent Exhibit B was not prepared by the declarant,
 6 he cannot authenticate this exhibit. The reasons for declarant's conclusions based on Exhibit B are
 7 irrelevant, unreliable and lack foundation. Fed. R. Evid. 402, 602, 702.

8 **H. Declaration of Celebrate Recovery Director Raul Rico**

9 1. *Paragraph 4, Lines 23-24.* Lacks foundation as to basis for concluding that church or
 10 recovery program has tripled in size. Fed. R. Evid. 602.

11 2. *Paragraph 5.* The declarant's reference to a single occasion where issue specific
 12 groups could not meet in separate rooms is insufficient to support declarant's conclusion that they
 13 current facility cannot accommodate the recovery ministry. The declarant offers no information
 14 about the current facility or its inferior layout. Fed. R. Evid. 602.

15 3. *Paragraph 6.* The declarant fails to establish the length of time she has been Director
 16 and on that basis has not established any foundation to offer any particulars on the nature of
 17 community need.

18 4. *Paragraph 7.* Irrelevant. Fed. R. Evid. 402.

19 5. *Paragraph 7, page 4, Lines 8-9.* Lacks foundation that declarant is familiar with
 20 Catalina site. Fed. R. Evid. 602.

21 6. *Paragraph 8, Lines 11-12.* Lacks foundation that declarant is familiar with Catalina
 22 site. Fed. R. Evid. 602.

23 **I. Declaration of Josephine Del Rio**

24 1. *Paragraph 3.* Irrelevant. Fed. R. Evid. 402.

25 2. *Paragraph 4.* Irrelevant. Fed. R. Evid. 402.

26 3. *Paragraph 5.* Irrelevant. Fed. R. Evid. 402.

27 4. *Paragraph 6.* Irrelevant, lacks foundation. Fed. R. Evid. 402, 602.

1 5. *Paragraph 7.* Lacks foundation. Fed. R. Evid. 602. The declarant fails to establish
 2 any foundation to offer any particulars about the Catalina property.

3 **J. Declaration of Daniel Briggs**

4 1. *Paragraph 3.* Hearsay to the extent the declarant is relaying what another law clerk
 5 (Kevin Rodriguez) did, whom he spoke with at the Environmental Services Division of the City of
 6 San Leandro, and what he requested from the City. Fed. R. Evid. 602, 802.

7 2. *Paragraph 5 & Exhibit D.* Exhibit D is not properly authenticated. Fed. R. Evid. 901,
 8 902.

9 3. *Paragraph 6 & Exhibit E.* Lacks foundation. Fed. R. Evid. 602. Exhibit E is not
 10 authenticated and lacks foundation. Fed. R. Evid. 602, 901, 902.

11 **K. Declaration of FaithKidz Ministry Director Alicia Swinderman**

12 1. *Paragraph 3, Lines 16-17.* Lacks foundation insofar as the declarant has not
 13 established that she read or reviewed the affidavit of Casey Lee. Fed. R. Evid. 602.

14 2. *Paragraph 3, Lines 19-20.* The declarant fails to establish any foundation that she is
 15 familiar with the Catalina property or to offer any particulars associated with the City's decision to
 16 deny use of the Catalina property. Fed. R. Evid. 602.

17 3. *Paragraph 4.* Lacks foundation as to declarant's knowledge of number of existing
 18 classrooms, number of children turned away, or length of time classrooms because have been closed
 19 "every week" because there are no facts as to declarant's length of service as a FaithKidz Ministry
 20 Director.

21 4. *Paragraph 4, page 3, Lines 1-2.* Lacks foundation that declarant is personally familiar
 22 with new facility or its ability to accommodate FaithKidz Ministry.

23 5. *Paragraph 5, Lines 3-4.* The declarant fails to establish any foundation to offer any
 24 particulars as to the growth of the FaithKidz Ministry.

25 6. *Paragraph 5, Lines 4-8.* Irrelevant. Fed. R. Evid. 402. Lacks foundation. Fed. R.
 26 Evid. 602.

27 7. *Paragraph 6.* Lacks foundation that declarant has personal knowledge of the new
 28 facility or its ability to accommodate mission to minister to as many children as possible.

1 8. *Paragraph 7.* The single example offered is an insufficient basis for the declarant's
 2 offered conclusion that the church is constrained in practicing its religious beliefs. Lacks foundation
 3 that the declarant is personally familiar with the new facility. Fed. R. Evid. 602. Hearsay to the
 4 extent the declarant is relaying what a mother felt. Fed. R. Evid. 802.

5 **II. DECLARATION OF PETER D. MACDONALD, EXHIBIT A (INDEX TO PARTIAL
 6 ADMINISTRATIVE RECORD), AND ADMINISTRATIVE RECORD SECTIONS a
 7 THROUGH q**

8 The Defendants object to Exhibit A (Index to Partial Administrative Record), and
 9 Administrative Record Sections a through q, attached to the Declaration of Peter D. MacDonald.
 10 This declaration purports to attach portions of the "administrative record relative to the City of San
 11 Leandro's decision on the properties located at 14600 and 14850 Catalina Street in the City of San
 12 Leandro, CA." (Declaration of Peter D. MacDonald, paragraph 2.) As an initial matter, the
 13 Declaration of Peter D. MacDonald purports to cite to portions of the "Administrative Record."
 14 However, no Administrative Record for this proceeding exists as of the date of filing these
 15 objections. The "Administrative Record" was compiled by Plaintiffs for purposes of Plaintiffs'
 16 "Complaint for Violation of Constitutional Rights and the Religious Land Use and Institutionalized
 17 Persons Act (42 U.S.C. 1983, 42. U.S.C. 2000cc)." Plaintiffs did not ask the Defendants to prepare
 18 an administrative record for the decision which is being challenged. Said record is neither certified
 19 nor complete. Nor has the record referred to been recognized by Defendants as the "Administrative
 20 Record" for the decision being challenged. Hence, the Defendants respectfully submit that it would
 21 be improper for the Court to consider documents that are not part of a certified administrative record
 22 in connection with Plaintiffs' application for a preliminary injunction..
 23

24 Exhibit A is further objectionable because it is not properly authenticated and lacks
 25 foundation. ND Cal. Rule 7-5(a); *Orr v. Bank of America, NT&SA* (9th Cir. 2002) 285 F.3d 764,
 26 776.

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1 **III. REQUEST FOR JUDICIAL NOTICE & EXHIBIT C**

2 As a preliminary matter, the Defendants object to "Plaintiff and Real Party in Interest's
 3 Request for Judicial Notice," (hereinafter "Pltffs' RJN") because Plaintiffs fail to establish any
 4 authority for the items contained within the notice.

5 The Defendants further object to Plaintiffs' request that the Court take notice of the following
 6 items:

- 7 ● The legal definition of "assembly building," pursuant to California Building Code §
 8 203 A. California Building Code § 203 is purportedly "Exhibit C" but this exhibit is
 9 not attached to Plaintiffs' Request for Judicial Notice;
- 10 ● The maximum capacity of San Leandro City Hall;
- 11 ● San Leandro City Hall is an "assembly building" with a maximum capacity of 156
 12 persons; and
- 13 ● The number of properties within a 1/4 mile radius of City Hall ("Exhibit D"). (Pltffs'
 14 RJN at pp. 2-3.)

15 The California Building Code is irrelevant. Fed. R. Evid. 401, 402. For purposes of
 16 assemblies, the San Leandro Zoning Code governs. Plaintiffs' notice of the legal definition of
 17 "assembly building" is also irrelevant for purposes of defining "assembly" under the equal terms
 18 provision of RLUIPA. Fed. R. Evid. 401, 402.

19 The remaining facts are also irrelevant. Fed. R. Evid. 401, 402. In the present action,
 20 Plaintiffs seek to enjoin Defendants from preventing them from using 14600 and 14850 Catalina
 21 Street for religious assembly purposes. The maximum capacity of City Hall, that City Hall is an
 22 "assembly building," or its proximity to properties within a 1/4 mile radius having Hazardous
 23 Materials Business Plans, are not relevant to Plaintiffs' application for a rezone, the church's permit
 24 applications, or the City's processing of same. Nor are these facts relevant to the Court's
 25 determination of whether to issue a preliminary injunction or not. The accuracy of the above-
 26 referenced facts is also subject to reasonable dispute and requires formal proof, such that judicial
 27 notice is improper. Fed. R. Evid. 201; *Lee v. City of Los Angeles* (9th cir. 2001) 250 F.3d 668, 688-
 28 690.

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IV. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Accompanying Plaintiffs' Application for a Preliminary Injunction is a separate document entitled "Proposed Findings of Fact and Conclusions of Law." The Defendants hereby object to this document in its entirety, including all sixty-eight findings of fact and all thirty-four conclusions of law. None of the findings or conclusions is supported by any affidavits, admissible evidence, or citations. Defendants are unable to meaningfully respond to Plaintiffs' findings or conclusions. Furthermore, Defendants have objected to all of the affidavits and virtually all of the evidence submitted by Plaintiffs in support of their application for a preliminary injunction. Therefore, Plaintiffs' proposed findings or conclusions should not be adopted by this Court in connection with Plaintiffs' application for a preliminary injunction.

Additionally, in anticipation that Plaintiffs may seek to convert their application for a preliminary injunction to a motion for summary judgment on the basis of the “factual record,” the Defendants object on the grounds that notice and hearing requirements have not been met. Fed. R. Civ. P. 56; ND Cal. Rule 7-2(a); *Air Line Pilots Ass’n, Int’l v. Alaska Airlines, Inc.*, 898 F.2d 1393, 1397, n 4 (9th Cir. 1990).

V. CONCLUSION

Based on all of the foregoing, the Defendants respectfully request that the above evidentiary objections be granted and that the above-referenced paragraphs of the declarations, exhibits and other evidence be stricken.

Dated: August 15, 2007

Respectfully submitted,

MEYERS, NAVÉ, RIBACK, SILVER & WILSON

P. Mc

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